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In the Supreme Court of the United States

OCTOBER TERM, 1968

LINDA Mc INNIS, a minor, by **CLOTEE Mc INNIS**, her mother and next friend, **MATTHEW V. BOWDEN**, a minor, by **MRS. FLORENCE JOHNSON**, his mother and next friend, **LAVERN SMITH**, a minor, by **BERNICE SMITH**, his mother and next friend, **KIMBERLY RAE COBLER**, a minor, by **RALPH COBLER**, her father and next friend, **MARK FIELDS**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **WILLIAM ALEXANDER**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **VIRGINIA RUTH SCRUGGS**, a minor, and **MRS. VIRGINIA SCRUGGS**, her mother and next friend, all suing as individuals and as representatives of persons similarly situated, and **Concerned Parents and People of the West Side**, suing in behalf of the members of the class,

Plaintiffs-Appellants,

vs.

RICHARD B. OGILVIE, Governor of the State of Illinois, **RAY PAGE**, Superintendent of Public Instruction of the State of Illinois, **ADLAI E. STEVENSON III**, Treasurer of the State of Illinois, **MICHAEL J. HOWLETT**, Auditor of the State of Illinois,

Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

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Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

The Appellants, plaintiffs below, appeal from the order of the United States District Court for the Northern District of Illinois, Eastern Division (a three judge panel), dismissing their Amended Complaint. Appellants submit this Jurisdictional Statement to show that this Court has jurisdiction of this appeal and that the question presented is substantial.

OPINION BELOW

The opinion of the three judge District Court below is appended hereto as Appendix "A".

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. This is a class action for declaratory judgment and injunction brought under the Federal Civil Rights Act, 28 U.S.C. Section 1343, 42 U.S.C. Section 1983, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, on behalf of public high school and elementary school students in four school districts of Cook County, Illinois. Plaintiffs sought to declare invalid, and enjoin the operation of, Illinois statutes of general and statewide application establishing the public school financing system. This financing system, being based upon the arbitrary factors of wealth of the local school district and place of residence of the student, results in excessive variations among school districts as to per-pupil expenditures, thereby producing substantially unequal educational opportunity. A permanent injunction was sought to restrain defendants, the Governor,[1] Treasurer, Auditor and

[1] The new Governor, Richard B. Ogilvie, has been substituted for his predecessor, Samuel H. Shapiro, pursuant to Rule 25 (d) (1), Fed. R. Civ. P.

Superintendent of Public Instruction of the State of Illinois from distributing monies in reliance upon the statutory provisions referred to below.

2. The judgment of the three judge District Court below was entered on November 15, 1968. No rehearing was sought. Notice of Appeal to this Court was filed on December 13, 1968, in the United States District Court, Northern District of Illinois, Eastern Division.

3. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question by appeal is 28 U.S.C. Section 1253.

4. The case believed to sustain the jurisdiction of this Court is *Baker* v. *Carr,* 369 U.S. 186 (1962).

5. The validity of the following Illinois statutes is involved: Chapter 122, Sections 7-1, 7-2, 7-4, 7-27, 10-20, 10-20.3, 10-22, 10-22.14, 11-1, 11-5, 11-6, 11-9, 12-1, 12-9, 12-24, 17-1, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 17-9, 17-11, 18-1, 18-2, 18-8, 18-8.1, 18-9, 18-11, 18-14, 19-1, 19-2, 19-3, 19-8, 34-1, 34-18, 34-22.1, 34-22.2, 34-22.3, 34-22.4, 34-22.5, 34-22.6, 34-43, 34-52, 34-53, 34-54, 34-58, 34-62, 34-55, 34-73, Chapter 85, Sections 851, 851.2, and 851.3, Ill. Rev. Stats. (1967). These statutes are set forth in Appendix B hereto.

QUESTION PRESENTED ON APPEAL

Do the various Illinois statutes establishing the public school financing system violate the Equal Protection Clause of the Fourteenth Amendment because the system, being based primarily upon local school district wealth and pupil residence, necessarily results in substantially unequal educational opportunity?

STATEMENT OF THE CASE

Basis For Federal Jurisdiction in Court of First Instance. The three judge District Court had jurisdiction under 28 U.S.C. Sections 1343, 2201, 2281 and 2284.

FACTS

Since the court below granted defendants' motion to dismiss the Amended Complaint, we must take as true for present purposes the facts as alleged in the Amended Complaint.[2]

Article VIII, Section 1 of the Illinois Constitution of 1870 commands the Legislature to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." The Illinois Legislature's response has been a financing system of statewide applicability under which Appellant children are offered substantially unequal educational programs, facilities and services. (A.C., Para. 17).

Only about one-third as much money per child is spent upon Appellant children residing within Posen, Illinois (Cook County, Elementary Dist. No. 143½) as on children in other elementary districts. (A.C., Para. 15 and Appendix to A.C., Table I.) Less than three-fourths as much money per child is spent upon Appellant children residing within Chicago, Illinois (Cook County Unit Dist. No. 299) as on children in other unit districts. (A.C. Para. 15 and Appendix to A.C., Table III.) This disparity is compounded because a dollar spent in Chicago will purchase fewer educa-

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[2] Hereinafter, "A.C." refers to plaintiff's Amended Complaint, which is contained on pages 26 through 44 of the Certified Record on file with this Court. "Para" refers to paragraph. All Statutes cited are from the Illinois Revised Statutes (1967).

tional resources than in other areas of the state. (A.C. Para. 20 (b)).

As a direct result, therefore, there exist material disparities in the average level of educational attainment achieved by students in different school districts within the State of Illinois. Appellants attend schools with markedly inferior records of educational achievement. (A.C. Para. 18). Furthermore, a disproportionate number of Appellants do not possess the normal reading, mathematical and other skills for their respective age and grade level. (A.C. Para. 19). This causal relationship between expenditure per-pupil and educational quality was accepted by the lower court:

> Presumably students receiving a $1,000 education are better educated than those acquiring a $600 schooling. (Appendix A at 6-7.)

This inequality in educational opportunity necessarily results from the extreme disparity in the per-pupil tax base among the approximately 1,340 Illinois school districts. (Appendix to A.C., Tables I, II, and III.) These local school districts supply approximately 75% of all available revenue. (Appendix A at 4) School districts may levy a tax on all property within that district. Chapter 122, Sections 11-1, 11-5, 11-6, 11-9, 10-20, 10-20.3, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 17-9, 17-11, 34-1, 34-18, 34-43, 34-55, 34-53, 34-54, 34-58, and 34-62. In addition, the district may issue bonds to defray capital expenditures. Article IX, Section 12, Illinois Constitution of 1870; Chapter 122, Section 19-1 and Chapter 85, Sections 851, 851.2 and 851.3 and Chapter 122, Sections 11-6, 11-9, 10-22, 10-22.14, 19-2, 19-3, 34-55 and 34-22.1 through 22.6, 17-9, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, limit the maximum indebtedness—expressed as a percentage of the property base—and the maximum tax rate

for the several educational purposes. Article IX., Section 12, Illinois Constitution of 1870; Chapter 85, Sections 851, 851.2 and 851.3; Chapter 122, Sections 19-1, 34-1, 34-22.1 through 22-6, 17-9, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 34-53, 34-54, 34-58, and 34-73.[3]

State funds provide only approximately 20% of available revenue, and may be used only to defray current operation expenditures. Chapter 122, Section 18-9. A "flat" grant of $47 per elementary student and $54 per high school student is given to every district. Chapter 122, Section 18-1, 18-2, and 18-8 (1), 18-11, 18-14. An "equalization" grant is distributed to the poor districts. The amount of that grant is $400 per pupil, minus revenue that would be obtained if the district taxes at a specified low qualifying rate, and minus the "flat" grant. Chapter 122, Section 18-1, 18-2 and 18-8 (2), 18-8.1, 18-9, 18-11, 18-14. Thus, every district which does, in fact, levy the qualifying rate is assured of at least $400 per student.[4]

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[3]The power of districts with over 500,000 population—only the Chicago district — to tap local resources is even more restricted. The maximum tax rate is ½ or less than that allowed any other unit district. compare Chapter 122, Section 17-2. 17-2.2. 17-3. and 17-5 with Section 34-53 and 34-54. The Chicago district may not tax for certain purposes for which other districts may tax. compare Chapter 122, Section 18-1, 18-2 and 18-8 (2) 18-8.1, 18-9, 18-11, 18-14. 17-2. 17-2.1. 17-2.11. 17-2.3. 17-4. The Chicago district's maximum indebtedness is fixed at $375,000,000. Chapter 122, Sections 34-22.1 through 34-22.6.

[4] Miscellaneous state and local programs provide a small amount of additional revenue (A.C. Para. 13). Most of this revenue is earmarked for special purposes such as bus transportation, school lunches, and assistance to educationally gifted children. The expenditure of these funds does not materially alter the above disparities and is not challenged in this lawsuit.

REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

> *Today, education is perhaps the most important function of state and local governments.* Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. *It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship.* Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954) (emphasis added).

Thus, the right to "equal educational opportunity" is constitutionally protected. It is vital that this Court more fully define this right in the context of invidious discrimination on grounds other than race.

The educational needs of those children residing in the poorer school districts and the oppressive injustice of the present system make it imperative that this Court reverse the judgment of the court below. The urbanization of American society, with increasing areas of high density population, often Negro, has under the local school district financing system produced substantial disparities in the quality of education:

> Since the early 1960's when as a nation we discovered urban poverty, unprecedented energies have been directed toward obliterating the disadvantages suffered by the citizens of our ghettos. One of the areas which has been illumined by the recent effort is the nationwide pattern of *underfinanced public education for children in the poorer urban and rural neighborhoods.*

> It now appears that children in some school districts within a state are receiving education supported by only one-third or one-fourth the expenditures for children in the wealthier locations. The public school child in the ghetto is thus getting a public education far inferior to that provided to the child in a wealthier suburb. John Silard, *Memorandum On Malapportionment in State Support of Public Education*, presented to the Potomac Institute Conference on School District Inequities, Washington, D.C. (November 8-9, 1968).[5]

Moreover, this case is worthy of this Court's plenary consideration because of the clear presentation of the Constitutional issues raised by the Illinois public school financing scheme and the pendency of similar litigation. Although most states have public school financing schemes similar to that of Illinois, in that they are essentially based upon local school district taxation, the Illinois scheme presents the constitutional issues in sharp focus. The large number of districts, approximately 1,340, exaggerates the disparity in per pupil assessed property valuation, and consequently, in expenditures per pupil. In addition, the percentage of state contribution is smaller than that of all but three states. Illinois Education Association, *Lessons in Illinois Public School Finance*, p. 4 (Springfield, Illinois, 1962). Finally, the flat grant is included in the computation of the equalization grant, thereby vitiating its value. As even the court below conceded, the Illinois scheme is one in which "the inequalities of the existing arrangement are readily apparent" (Appendix A at 7).

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[5] See, generally, Benson, *The Cheerful Prospect* (Houghton-Mifflin, 1965) Chapter 2; *Racial Isolation in the Public Schools* (Report of the United States Commission on Civil Rights, 1967) pp. 25-31; *Profiles in School Support* (HEW, Office of Education, 1965), pp. 70-74; *The Quality of Inequality; Urban and Suburban Public Schools*, (The University of Chicago Center for Policy Study, 1968); Wise, *Rich Schools, Poor Schools* (to be published by The University of Chicago Press, February, 1969).

Furthermore, as a result of the inequities of most present financing schemes, other cases of a similar nature have arisen throughout the country in both Federal and State courts. Thus, the lower court's opinion is likely to be determinative of similar pending suits in Virginia,[6] Texas,[7] Michigan[8] and Oklahoma,[9] as it already has been in California,[10] where demurrers were sustained to plaintiff's complaint.

The District Court dismissed Appellants' Amended Complaint on two grounds; (1) the allegations of the Amended Complaint do not set out a violation of the Fourteenth Amendment and (2) the lack of judicially managable standards makes the controversy nonjusticiable. Appellants respectfully disagree.[11]

A. Violation of the Equal Protection Clause

The present test for determining whether the Equal Protection Clause is violated is set forth by Mr. Justice Black, speaking for the majority, in *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968):

> "[I]nvidous" distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the

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[6] *Burress* v. *Wilkerson*, Civil Action #68-C-13-H (W.D. Va.).

[7] *Rodriguez* v. *San Antonio Independent School District*, Civil Action #68-175-S.A. (W.D. Tex.)

[8] *Detroit Bd. of Education* v. *Michigan*, General Civil Action #103342 (Circuit Ct., Wayne County, Michigan; filed February, 1968).

[9] *Bd. of Education of Independent School District # 20* v. *State of Oklahoma*, Civil Action #68-99 (W.D. Okla.).

[10] *Serrano* v. *Priest*, # 938254 (Superior Ct., County of Los Angeles, California; filed August 23, 1968).

[11] In the district court, appellants argued that the Fourteenth Amendment requires compensatory education for disadvantaged children. That argument is abandoned here.

> State claims to be protecting, and interests of those who are disadvantaged by the classification.

The Illinois financing scheme fails this test.

1. Facts and Circumstances of the Law

It is unnecessary to decide whether a public school education is constitutionally required. It is enough to say that once a state has undertaken to provide such an opportunity, it is a right which must be made available to all on equal terms. *Brown* v. *Board of Education,* 347 U.S. at 493; *Hobson* v. *Hansen,* 269 F. Supp. 401 (D.D.C. 1967), *aff'd* sub nom, *Smuck* v. *Hobson,* ..... F.2d ....., 37 U.S.L. Week 2426 (D.C. Cir., decided January 21, 1969); *Gaston County* v. *United States,* 288 F. Supp. 678 (D.D.C. 1968) (3 judge court), *prob. juris. noted,* No. 701, 1968 Term, 37 U.S.L. Week 3247, January 13, 1969.

In *Brown,* the Court held that "separate educational facilities are inherently unequal." 347 U.S. at 495. And, in *Hobson* and *Gaston County, supra,* the Court found inequality *in fact* between white and black schools. Specifically, it was found that "proportionately less money has been spent on Negro education than on white" *Gaston County,* at 686; *Hobson, supra,* at 496. The natural result of this financial disparity was observed:

> A reasonable man might anticipate that this disparity between the expenditures for white and Negro pupils would manifest itself in statistics on respective educational levels by the two groups. *Gaston County, supra,* at 687.

In the instant case, the gross disparities in per-pupil expenditures among the various school districts are based upon the wealth of local school districts and the residence of the child. As a direct result of this method of financing, material disparities exist in the level of educational attainment achieved by students in different school districts. Appellants attend school with markedly inferior

records of educational achievement. A disproportionate number of Appellants do not possess the normal reading, mathematical and other skills for their respective age and grade level. (A.C. Para. 18, 19)

The factors of wealth and geography have repeatedly been held unconstitutional in classifying those who are to benefit from a state law, even where the Court found a "rational basis" for the use of these factors. Rational classifications based upon wealth were invalidated in *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963); *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966). Such discrimination is particularly invidious in public education where so often, especially in suburban communities, community wealth is a reflection of individual wealth. Thus, the economically and socially disadvantaged are given an inferior opportunity in that very area which is the chief prerequisite to upward mobility. This result, tending to create closed social classes, is antithetical to democracy. Citizens need a good education, as they need free speech and press, in order to exercise intelligently their right to vote and thereby participate in the democratic process. See, Meiklejohn, *The First Amendment is an Absolute,* 1961 Sup. Ct. Rev. 245, 263. This result is also antithetical to the very concept of public education: employing the wealth of the general society to educate the young.

Similarly, rational classifications based on place of residence have been held unconstitutional. *Gray* v. *Sanders,* 372 U.S. 368 (1963); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). "This does not necessarily mean that . . . [the] plan is irrational . . . . We conclude simply that . . . [the] plan is impermissible for the States under the Equal Protection Clause . . ." *Reynolds, supra,* at 575. In education, as in voting, the state must adequately compensate for differences in population density when creating districts. This

has not been done. *Education for the Future of Illinois,* A Report of the Task Force on Education (1965) (herein after cited as "Task Force Report".)

2. The Interests of the Disadvantaged Children

The rights of disadvantaged criminal defendants, voters, and those exercising free speech have received special protection from this Court. *Griffin* v. *Illinois, supra; Douglas* v. *California, supra; Harper* v. *Virginia Board of Elections, supra., Reynolds* v. *Sims, supra, Carrington* v. *Rash,* 380 U.S. 89 (1965); *NAACP* v. *Button,* 371 U.S. 415 (1963). The right of students to equal educational opportunity deserves similar special protection. Free speech and voting are at the heart of the rights and responsibilities of citizenship; but education is the best guarantee of political participation and the wisdom of the vote. *Gaston County, supra; Brown* v. *Board of Education, supra.* Imprisonment is an intense and compulsory deprivation of liberty for a few; an inferior public education is a compulsory deprivation for many of that opportunity without which no "child may reasonably be expected to succeed in life . . . ." *Brown, supra* at 493. Moreover, courts have traditionally played a special role in the protection of minors. *Ginsberg* v. *New York,* 390 U.S. 629 (1968); *In re Gault,* 387 U.S. 1 (1967); *Prince* v. *Commonwealth of Massachusetts,* 321 U.S. 158 (1944).

The interests of the students and the interests of the state merge with respect to the importance of a quality education. As set forth in the Report of the National Advisory Committee on Civil Disorders:

> Many of those whose recent acts threaten the domestic safety and tear at the roots of American democracy are the products of yesterday's inadequate and neglected inner-city schools. The greatest unused and underdeveloped human resources in America are to be found in the deteriorating cores of America's urban centers. Testimony of Paul W. Briggs, Superintendent of Schools, Cleveland, Ohio, before the National

Advisory Commission on Civil Disorders, Report of the National Advisory Commission, p. 236 (Wash., D.C., 1968).

3. The Interests of the State

The myth of "local option" or "local control," to which the lower court subscribes (Appendix A at 10-11) should not magically shield the realities of the present financing system from judicial scrutiny. To argue seriously that a school district has control over the quality of education therein is fallacious, when one school district is not able to raise more than $400 per pupil even if taxing at the highest legal rate, while another district raises $1000 per pupil even if taxing at substantially less than the highest legal rate.

The direct relationship between per pupil assessed valuation of property and expenditures per pupil is clear. (Appendix to A.C., Tables I, II, III. See also *Task Force Report.*) That relationship persists even though the parents and neighbors of the less fortunate children have taxed themselves at high rates. Moreover, many districts have a tax base inadequate to support a public school system. (*Task Force Report*). *The hard facts are that the quality of education is controlled by the fortuity of the size of the tax base.*

Local experimentation is hindered. Districts with the least need to experiment may receive the most funds; districts with the greatest need may receive the least. This is dramatically illustrated in the Chicago district. Despite the recognition of local officials of the great need to restructure organization, physical plant and the curriculum, and despite the willingness of Chicagoans to tax themselves at the maximum legal rate, that district will soon be forced to increase its student-teacher ratio considerably.

Statement of Dr. James Redmond, Chicago School Superintendent, before the School Problem Commission of the State of Illinois, January 24, 1969.

Nor can the "local control" argument justify the invidious effect of the flat grant. Assume that at the qualifying tax rate, an elementary school district with a high per pupil assessed valuation of property can raise $1000 per pupil, while another elementary district with a low assessed valuation per pupil can only raise $200 per pupil. Because the flat grant of $47 per pupil is counted toward the $400 minimum, the wealthier district would receive $1,047, whereas the poorer district would receive only $400: [$200 + $47 + ($400 — $247) = $400] Chapter 122, Section 18-8(2). The poorer school district, in effect, receives no flat grant at all, while the wealthier district receives a bonus.

Thus, there is no meaningful local control over financing in the poorer school districts. On the other hand, acceptance of the Appellants' position does not preclude local control over all other school functions such as hiring personnel or planning curriculum. As discussed below, local control in this more meaningful sense might well be enhanced.

B. Less Onerous Alternatives

Appellants also contend that the importance of education to the welfare of individuals requires invalidation of the Illinois financing system if there are less onerous alternatives which do not base the quality of educational opportunity on the arbitrary factors of local school district wealth and pupil residence. Where individual interests have been deemed worthy of special protection, the availability of those less onerous alternatives invalidates the statute. *Shelton* v. *Tucker,* 364 U.S. 479 (1960) (First Amendment); *NAACP* v. *Button, supra,* (First Amend-

ment); *Carrington* v. *Rash, supra,* (voting rights); *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968) (education).

A number of alternatives have been suggested:

> One [alternative] is to district on a more functional basis, for example, by creating districts with substantially equal tax bases. . . . Or the state can adopt a system of equalization by means of varying state grants which would bring about substantial equality in available resources among districts. Or the state can levy all taxes for the support of schools on a statewide basis, allocating funds to local districts by a formula which will result in substantial equality among districts. Horowitz and Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State,* 15 U.C.L.A. L. Rev. 787, 810-11 (April 1968).

Professor Coons has suggested a novel alternative. The state would establish a schedule of support for both current and capital expenditures, guaranteeing that any local unit levying the prescribed tax rate will have available the prescribed number of dollars per pupil and no more. Coons, *Private Wealth and Public Education* (to be published by the Harvard University Press; Fall, 1969). For example:

Local Tax Rate	*Level of Support*
½%	$300/pupil
1%	$450/pupil
1¼%	$550/pupil
1½%	$650/pupil
3%	$900/pupil

If the local tax rate produced more than the corresponding level of support, the excess would be turned over to the state. That excess and other state monies would then be distributed to those local units not raising the prescribed level of support.

Therefore, the court below is incorrect when it states:

> The *only* possible standard is the rigid assumption that each pupil must receive the same dollar expenditures. (Appendix A at 17). (emphasis supplied)

This misconception accounts in part for its determination that the controversy is not justiciable.

C. The Controversy Is Justiciable

As the second ground for its decision, the district court points to the alleged lack of "discoverable and manageable standards" and the difficulty in fashioning adequate remedies. (Appendix A at 16-17). But courts have long fashioned standards of judicial scrutiny and long possessed skill in finding a denial of equal protection:

> Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar. . . . *Baker* v. *Carr,* 369 U.S. at 226.

Factors which courts have considered in assessing equal educational opportunity include the number and prominence of the faculty, size of the student body, size of the library, the availability of extra-curricular activity, median per pupil expenditures, condition of school buildings, availability of text books, teacher experience, average teacher salary and even reading scores and aptitude tests. *Hobson* v. *Hansen, supra; Gaston County, supra; Sweatt* v. *Painter,* 339 U.S. 629 (1950). Indeed, in *Hobson,* the court passed upon the sophisticated problem of the validity of a track system based upon educational testing.

The standards for the determination of a denial of equal protection in the context of education are discoverable and manageable when the classification is based on race, as the district court observed:

> Similarly, *Hobson* v. *Hansen*, 269 F. Supp. 401 (D.D.C., 1967) struck down *variations in expenditures* because the classifying factor was race. (Appendix A at 14) (emphasis supplied)

No reason is apparent why these standards should not be equally discoverable and manageable when the classification is based on wealth and geography. In both cases, the "variations in expenditures" result from invidious classifications. And where the Court deems it wise not to spell out any precise constitutional standards, "developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements. . . ." *Reynolds* v. *Sims*, *supra* at 578; See also *Brown* v. *Board of Education*, 349 U.S. 294 (1955).

An equal per pupil expenditure would not necessarily be required. Mathematical variations would be permissible. *Reynolds, supra.* Variations which relate to a legitimate legislative goal would also be permissible:

> So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible . . . . *Reynolds* v. *Simps, supra* at 579.

Thus, differences resulting from added expenditures for educationally deprived or gifted children would be permissible; arbitrary differences based on wealth and geography, as presently exist, are not.

Nor would a court experience difficulty in fashioning an adequate remedy. But more important, this Court need not deal at this time with the question of appropriate remedies. Commenting on the analogous case of *Baker* v. *Carr*, this Court has said, in *Reynolds* v. *Sims*, 377 U.S. at 556:

We intimated no view as to the proper constitutional standards for evaluating the validity of a state legislative apportionment scheme. Nor did we give any consideration to the question of appropriate remedies. Rather, we simply stated:

> "Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial."

CONCLUSION

For the reasons stated above, probable jurisdiction should be noted or, in the alternative, consideration of the issue of jurisdiction should be postponed until the hearing on the merits.

Respectfully submitted,

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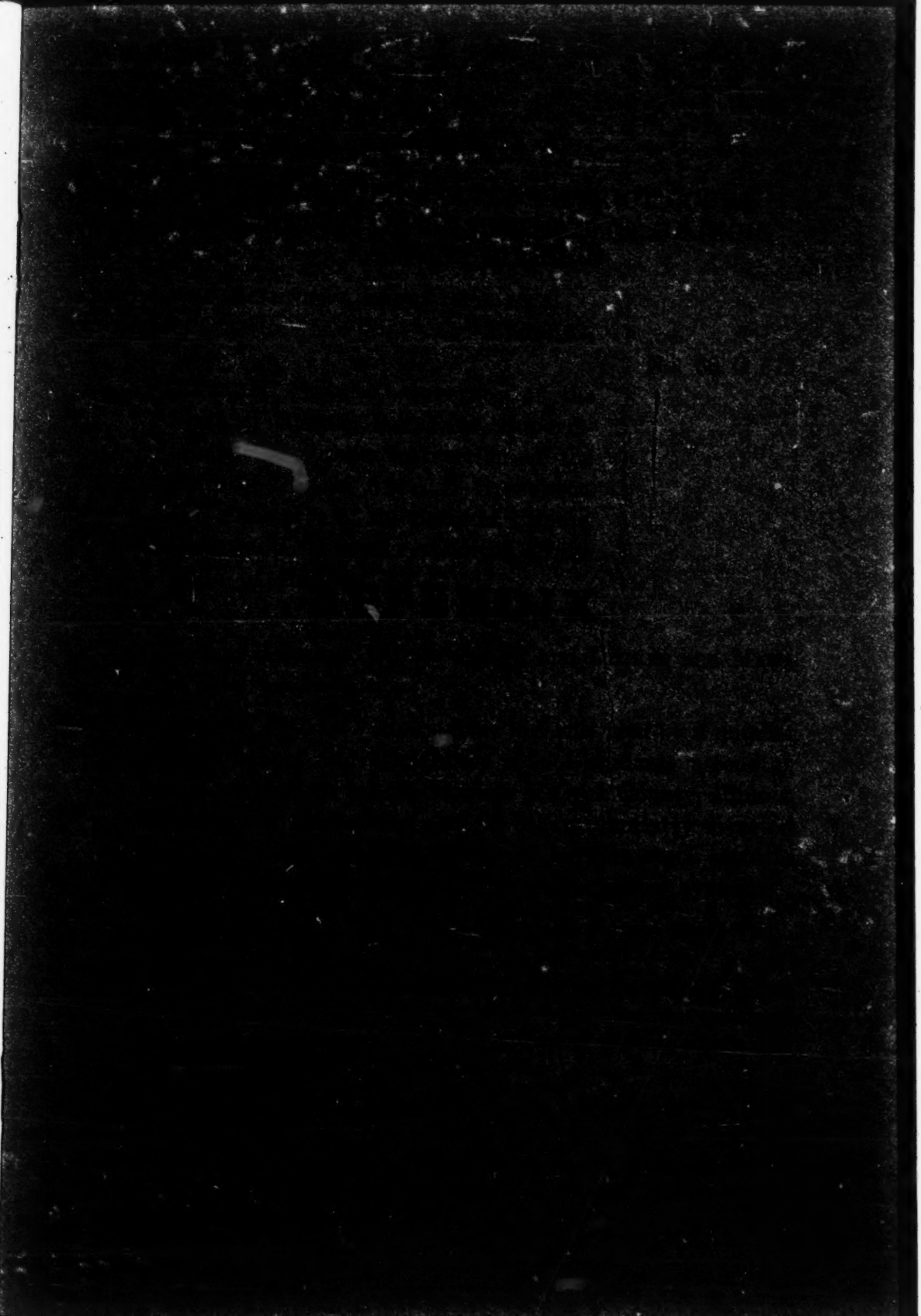

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA McINNIS, a minor, etc., et al.,	)	
Plaintiffs,	)	
vs.	)	No. 68 C 673
SAMUEL H. SHAPIRO, Governor of the State of Illinois, RAY PAGE, Superintendent of Public Instruction of the State of Illinois, ADLAI E. STEVENSON III, Treasurer of the State of Illinois, MICHAEL J. HOWLETT, Auditor of the State of Illinois,	)	
Defendants.	)	

Before HASTINGS, *Circuit Judge*, and DECKER and MAROVITZ, *District Judges*.

DECKER, *District Judge*. This is a suit filed by a number of high school and elementary school students attending school within four school districts of Cook County, Illinois, on behalf of themselves and all others similarly situated challenging the constitutionality of various state statutes dealing with the financing of the public school system.[1]

Plaintiffs claim that these statutes[2] violate their four-

[1] There is also a corporate plaintiff, Concerned Parents and People of the West Side, which was organized to improve the quality of educational facilities available to the citizens of an area within Chicago popularly known as "Lawndale."

[2] Specifically, the students challenge the following parts of 1967 Ill.Rev.Stat. ch. 122: §§ 11-1, 11-6, 11-9, 18-1 through 18-4, 18-8 through 18-14, 29-5, 34-22 through 34-29, and 34-42 through 34-82. Also questioned are ch. 122, articles 17, 19, and 32, and ch. 85 §§ 51 through 51.6.

teenth amendment rights to equal protection and due process because they permit wide variations in the expenditures per student from district to district, thereby providing some students with a good education and depriving others, who have equal or greater educational need. Plaintiffs claim to be members of this disadvantaged group.

To correct this inequitable situation, they seek a declaration that the statutes are unconstitutional and a permanent injunction forbidding further distribution of tax funds in reliance on these laws.

The defendants are state officials charged with the administration of the legislation which allegedly permits this discrimination.

A three-judge district court was convened pursuant to 28 U.S.C. §§ 2281 and 2284. Defendants then moved to dismiss the complaint (1) for lack of jurisdiction and (2) for failure to state a cause of action.

We conclude that we have jurisdiction. After examining the complaint, and studying the extensive briefs filed by the respective parties as well as the brief of the amici curiae,[3] we further conclude that no cause of action is stated for two principal reasons: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational

[3] The following five organizations filed a brief in support of the complaint as amici curiae: American Jewish Congress, League of Women Voters of Illinois, South Suburban Human Relations Council, National Association of Social Workers, and Inter-Community Programs, Inc.

needs,[4] and (2) the lack of judicially manageable standards makes this controversy nonjusticiable. After explaining the structure of the existing Illinois legislation, this opinion will discuss these two conclusions in detail.

I. Jurisdiction

The federal courts have jurisdiction over the subject matter of this controversy. As stated in *Baker* v. *Carr*, 369 U.S. 186, 200 (1962):

> "Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts."[5]

Similarly, the allegations do not present a political question because there is no potential conflict between coordinate branches of the federal government.[6] Both the

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[4] While the complaining students repeatedly emphasize the importance of pupils' "educational needs," they do not offer a definition of this nebulous concept.

Presumably, "educational need" is a conclusory term, reflecting the interaction of several factors such as the quality of teachers, the students' potential, prior education, environmental and parental upbringing, and the school's physical plant. Evaluation of these variables necessarily requires detailed research and study, with concomitant decentralization so each school and pupil may be individually evaluated. See pages 14 & 23-4 *infra*.

[5] See also *Bell* v. *Hood*, 327 U.S. 678 (1946); *Colegrove* v. *Green*, 328 U.S. 549 (1946).

[6] "[I]t is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal juridicary's relationship to the States, which gives rise to the 'political question.'" 369 U.S. 210. See also *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). But see *Coleman* v. *Miller*, 307 U.S. 433 (1939).

equal protection and the due process clauses have long been used to scrutinize state legislative action. See, *e.g.*, *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488-9 (1955).[7]

II. The Financing of Illinois' Public Schools

The General Assembly has delegated authority to local school districts to raise funds by levying a tax on all property within the district. In addition, the school districts may issue bonds for constructing and repairing their buildings. Legislation limits both the maximum indebtedness and the maximum tax rate which localities may impose for educational purposes. In 1966-67, the approximately 1300 districts had roughly $840 per pupil with which to educate their students, of which about 75% came from local sources, 20% was derived from state aid, and 5% was supplied by the federal government. Since the financial ability of the individual districts varies substantially, per pupil expenditures vary between $480 and $1,000. State statutes which permit such wide variations allegedly deny the less fortunate Illinois students of their Constitutional rights.

Article VIII, section 1 of the Illinois Constitution requires the legislature to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." Accordingly, a state common school fund supplements each district's local property tax revenues, guaranteeing a foundation level of $400 per student. The common school fund has two main components: (1) a flat grant to districts for each pupil, and (2) an equalization grant awarded to

[7] See also *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 322 (1959); *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563 (1910).

each district which levies a minimum property tax rate.[8] The equalization grant is calculated on the assumption that the district only assesses the minimum rate. Total revenues from the state common school fund account for about 15%-18% of all districts' income.

The local tax revenue per student which is necessarily generated by the preceding minimum rate[9] is added to the flat grant per pupil. If this sum is less than $400, the difference is the equalization grant. Therefore, every district levying the minimum rate is assured of at least $400 per child. On the other hand, if a locality desires to tax itself more heavily than the minimum rate, it is not penalized by having the additional revenue considered before determination of the equalization grant. Since the hypothetical calculation uses the same tax rate for all localities, the assumed revenue per child depends upon the total assessed property value in a district and the number of students. Thus, the equalization grant tends to compensate for variations in property value per pupil from one district to another.

Finally, numerous special programs, both state and federal, supply about 10% of the districts' revenues. This "categorical aid" is allocated for particular purposes such as bus transportation or assistance to handicapped and disadvantaged children. Plaintiffs do not challenge these

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[8] Over 97% of the districts qualify for the equalization grant. The flat grant, accounting for about one-third of the state aid, is now $47 per elementary student and $54.05 per high school pupil.

[9] Specifically, the qualifying rate is multiplied by the average assessed property valuation per pupil to obtain a minimum income from local taxation.

programs, conceding that they are rationally related to the educational needs of the students.[10]

III. The Fourteenth Amendment: Equal Protection and Due Process

The underlying rationale of the complaint is that *only* a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment.[11] Plaintiffs assert that the distribution of school revenues to satisfy these needs should not be limited by such arbitrary factors as variations in local property values or differing tax rates.

Clearly, there are wide variations in the amount of money available for Illinois' school districts, both on a per pupil basis and in absolute terms. Presumably, students receiving a $1000 education are better educated than

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[10] For a more detailed description of Illinois' public school financing, see generally Task Force on Education, *Education For The Future of Illinois*, ch. VII (1966).

[11] Although plaintiffs stress the alleged denial of equal protection, they seek relief resembling substantive due process. Surely, quality education for all is more desirable than uniform, mediocre instruction. Yet if the Constitution only commands that all children be treated equally, the latter result would satisfy the Fourteenth Amendment. Certainly, parents who cherish education are constitutionally allowed to spend more money on their children's schools, be it by private instruction or higher tax rates, than those who do not value education so highly. Thus, the students' goal is presumably a judicial pronouncement that each pupil is entitled to a minimum level of educational expenditures, which would be significantly higher than the existing $400.

those acquiring a $600 schooling.[12] While the inequalities of the existing arrangement are readily apparent, the crucial question is whether it is unconstitutional. Since nearly three-quarters of the revenue comes from local property taxes, substantially equal revenue distribution would require revamping this method of taxation, with the result that districts with greater property values per student would help support the poorer districts.

A. Social Policy

While the state common school fund tends to compensate for the variations in school districts' assessed valuation per pupil, variation in actual expenditures remains approximately 3.0 to 1, 2.6 to 1, and 1.7 to 1 for elementary, high school and unit districts respectively. Though districts with lower property valuations usually levy higher tax rates, there is a limit to the amount of money which they can raise, especially since they are limited by maximum indebtedness and tax rates. Plaintiffs argue that state statutes authorizing these wide variations in assessed value per student are irrational, thus violating

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[12] These figures probably understate the national discrepancies. See, *e.g.*, Levi, *"The University, The Professions, and The Law — An Address,"* 56 Calif.L.Rev. 251, 258 (1968).

"The average current expenditures in 1965 for the East South Central states was 354 dollars per pupil in the primary and secondary public schools. The comparable figure was 732 dollars in the Middle Atlantic states. . . . These discrepancies also occur . . . between suburbs surrounding a single city. For example, the expenditure per high school pupil in a suburb to the north of Chicago is 1,283 dollars; in a suburb to the south of the city it is 723 dollars. The expenditure per elementary school pupil in a northern suburb is 919 dollars; in a southern suburb it is 421 dollars."

See also National Education Association, *Rankings of The States, 1966*, page 51 (1966).

the due process clause. Moreover, under the equal protection clause, the students contend that the importance of education to the welfare of individuals and the nation requires the courts to invalidate the legislation if potential, alternative statutes incorporating the desirable aspects of the present system can also achieve substantially equal per pupil expenditures.[13]

Illustrating how the school financing could be improved, plaintiffs suggest two alternatives:[14] (1) all students might receive the same dollar appropriations, or (2) the state could siphon off all money in excess of $ x per pupil which was produced by a given tax rate, in effect eliminating variations in local property values while leaving the districts free to establish their own tax rate.[15]

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[13] Thus, the students advocate a doctrine similar to the close scrutiny given laws which infringe First Amendment rights. See, *e.g.*, *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967); *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963).

[14] Plaintiffs' suggestions arguably go no further than the upheavels recently created by bussing pupils and redrawing district boundaries in order to achieve racial balance. Except where localities attempted to avoid *Brown* v. *Board of Education*, 347 U.S. 483 (1954), however, these changes were accomplished legislatively rather than judicially.

[15] For example, if a district only levied a 1% tax rate, it could keep only $400 per pupil, regardless of the absolute dollars produced. On the other hand, the state would also guarantee $400 per pupil to units imposing to 1%. At higher rates, such as 4%, the state would thus substantially aid districts with low valuations, deriving most of its funds from wealthy districts which produced far more than $400 per pupil by a 1% rate.

Without doubt, the educational potential of each child should be cultivated to the utmost, and the poorer school districts should have more funds with which to improve their schools. But the allocation of public revenues is a basic policy decision more appropriately handled by a legislature than a court. To illustrate, the following considerations might be relevant to a financing scheme: statewide variations in costs and salaries, the relative efficiency of school districts, and the need for local experimentation.

As stated in *Metropolitan Co.* v. *Brownell*,[16] 294 U.S. 580, 584 (1935):

> "[T]he burden of establishing the unconstitutionality of a statute rests on him who assails it . . . A statutory discrimination will not be set aside as the denial of equal protection of the laws if any statement of facts reasonably may be conceived to justify it."

And more recently, the Supreme Court declared that:

> "[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality."

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[16] In *Metropolitan Co.*, the Court upheld a state regulatory statute which distinguished between domestic and foreign casualty insurance companies, finding that differences in the security and collection of claims against the two groups may have justified differential treatment.

McGowan v. *Maryland*, 366 U.S. 420, 425-6 (1961).[17] See also *Salsburg* v. *Maryland*, 346 U.S. 545, 552-3, (1954).[18]

Tested by these standards, the existing school legislation is neither arbitrary nor does it constitute an invidious discrimination.[19] It therefore complies with the Fourteenth Amendment.

In the instant case, the General Assembly's delegation of authority to school districts appears designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools. Moreover, local citizens must select which municipal services they value most highly. While some communities might place heavy emphasis on schools, others

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[17] Sunday laws were sustained even though First Amendment rights were involved and despite the availability of less onerous alternatives for providing a day of rest and recreation.

[18] "We do not sit as a superlegislature or a censor.

. . .

"We find little substance to appellant's claim that distinctions based on county areas are necessarily so unreasonable as to deprive him of the equal protection of the laws guaranteed by the Federal Constitution.

" . . . Territorial uniformity is not a constitutional requisite." 346 U.S. 550-2.

[19] See also *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 527-8 (1959) (exemption of certain merchandise from state taxation upheld under the equal protection clause); *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563, 573 (1910): "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

may cherish police protection or improved roads. The state legislature's decision to allow local choice and experimentation is reasonable, especially since the common school fund assures a minimum of $400 per student.[20]

Plaintiffs stress the inequality inherent in having school funds partially determined by a pupil's place of residence, but this is an inevitable consequence of decentralization. The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using hypothetical calculation. Furthermore, the flat grants and state and federal categorical aid reduce the school's dependence on local taxes. While alternative methods of distributing school monies might be superior to existing legislation,

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[20] While condemning the present distribution system, plaintiffs concede the virtue of decentralization, as follows:

"Decentralized administration and decision-making are desirable for administrative and political reasons. A division of the state into local school districts is therefore necessary. The voters in any particular area are best able to weigh convenience, the desired degree of homogeneity in the student body, and other factors. These voters are the best able to draw school district boundaries. Once these boundaries are drawn, the administrators or residents of the district, being closest to the problem, are best able to determine the educational needs of the district's children. That decision takes the form of support for a certain tax rate. Sometimes, this decentralized decision-making in creating districts or in adopting a tax rate will result in insufficient distribution of educational services. When that occurs the state in recognition of its ultimate responsibility provides sufficient funds to purchase 'basic' education for each child. Four hundred dollars per pupil is the figure necessary to support a 'basic' educational program. Of course, any disadvantage is outweighed by the values of decentralized administration and decision-making."

> "To be able to find fault with a law is not to demonstrate its validity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. . . . Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the Fourteenth Amendment."

Metropolis Theatre Co. v. *Chicago,* 228 U.S. 61, 69-70 (1913).[21]

Plaintiffs also attack numerous details of the present legislative scheme, such as the uniform maximum tax rate for both elementary and high schools. Allegedly, high schools need more money than elementary schools; but the answer is the increased number of students attending high schools may provide the additional funds. Also, plaintiffs complain that the maximum tax rate for the City of Chicago is about half that for the remaining school districts. Since the city is so much larger than other districts, however, distinctive legislation is appropriate to adjust for potential efficiencies.[22] The maximum tax rates which plaintiffs object to were enacted to avoid another disaster such as that which struck certain localities during the Great Depression; the possibility of similar economic crises supports the statutory ceilings.

In each of the instances where particular statutory provisions have been criticized by plaintiffs we can find a legitimate legislative policy. Where differences do exist from district to district, they can be explained rationally.

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[21] Differential theatre license fees based on the price of admission, rather than one profit revenue, satisfied the equal protection clause.

[22] See, *e.g.*, *Latham* v. *Board of Education,* 31 Ill.2d 178, 184 (1964).

The charges made in the complaint fall short of demonstrating either an arbitrary exercise of legislative power or an invidious discrimination. Under these circumstances, there can be no denial of any Fourteenth Amendment rights.

Moreover, the legislature is constantly upgrading the quality of education. For example, the foundation level was recently revised from the 1965-66 level of $330 to the present $400. Also, the General Assembly has substantially consolidated the school districts, reducing the 11,955 which existed in 1945 to approximately 1,340 today. Recently a legislative study commission suggested that educational television be introduced in the schools and that the foundation level be raised to $435. See *Report of the School Problems Commission No. 9*, ch. I (1967); compare *Report of School Problems Commission No. 7*, p. 76-77 (1963).[23]

B. Plaintiffs' Legal Precedent

The complaining students rely upon recent Supreme Court decisions in the fields of school desegregation,[24]

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[23] In addition, the Task Force on Education, sponsored in 1966 by then Governor Kerner and the legislature's School Problems Commission, recently proposed a plan of state financial support whereby each elementary student would receive a minimum of $600 and each high school student $750. Task Force on Education, *Education For The Future of Illinois*, p. 113, 135 (1966). *Compare* McLure, *A Study of the Public Schools in Illinois* (1965).

[24] See, *e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Griffin* v. *County School Board*, 377 U.S. 218 (1964).

voting rights[25] and criminal justice.[26] Specifically, they contend that "equal educational opportunity," however that term may be defined, is constitutionally compelled because (1) state discrimination in education may not be based on color, (2) the state may not employ arbitrary geographical lines to establish electoral units within local governments, and (3) wealth may not be used to differentiate among criminal defendants if such discrimination is adverse to the indigent.[27]

But the plaintiffs' conclusion does not follow so readily from the preceding building blocks. The decided cases establish significant, but limited principles. To illustrate, *Brown* v. *Board* was primarily a desegregation case. Although placed in the context of public schools, it does not undermine the validity of Illinois' public financing. Similarly, *Hobsen* v. *Hansen*, 269 F.Supp. 401 (D.D.C. 1967), struck down variations in expenditures because the classifying factor was race.[28] The holding in *Douglas* v.

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[25] See, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Avery* v. *Midland County*, 36 L.W. 4257 (1968).

[26] See, *e.g.*, *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Douglas* v. *California*, 372 U.S. 353 (1963); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

[27] See generally Kurland, *"Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined,"* 35 U.Chi.L.Rev. 583, 586 (1968).

[28] Of course, if plaintiffs alleged that Illinois' legislation was designed to avoid the Supreme Court's racial desegregation decisions, they would state a cause of action. See *Griffin* v. *School Board*, 377 U.S. 218 (1964).

California, 372 U.S. 353 (1963), derived primarily from its criminal justice setting, rather than the poverty of the defendant. Moreover, *Reynolds* v. *Sims*, 377 U.S. 533 (1964), strengthened citizens' voting rights because the Constitution specifically enfranchises all citizens equally, not as a result of general antipathy to historical geographical divisions.

Actually, there is little direct precedent because the contentions now presented are novel. But, the few relevant cases indicate that plaintiffs must resort to the legislature rather than the courts. The students are not deprived of their civil rights under 28 U.S.C. § 1343 because the asserted guarantee does not exist under the Constitution. *LeBeauf* v. *State Board of Education*, 244 F.Supp. 256, 260 (E.D.La. 1965), held:

> "'There simply is no right, privilege, or immunity secured to these plaintiffs by the Constitution and laws of the United States being in any way denied by these respondents when they allocate and disburse funds . . .'"[20]

Similarly, in *Hess* v. *Mullaney*, 213 F.2d 635 (9th Cir. 1954), the Ninth Circuit upheld a property tax which returned a disproportionately small amount of funds to the

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[20] Although the primary thrust of the complaint was directed against local segregation, the court squarely confronted the question now before this court, sustaining state legislation which provided that:

> "[A] large portion of the funds so allocated must be apportioned on a per educable basis, and the remaining distribution is made on a basis of equalization so as to provide and insure a minimum educational program in all public schools." 244 F.Supp. 258.

taxpayers' locality.[30] Since this tax also supported the public schools, the plaintiffs' instant claim is analogous. See also *General American Tank Car Corp.* v. *Day*, 270 U.S. 367 (1926).[31] *Compare Dean* v. *Coddlington*, 81 S.D. 140 (1964); *Sawyer* v. *Gilmore*, 109 Me. 169, 83 A. 673 (1912); *Orleans Parish* v. *State Board*, 215 La. 703, 41 So. 2d 509 (1949).[32]

IV. Lack of Judicially Manageable Standards.

Even if the Fourteenth Amendment required that expenditures be made only on the basis of pupils' educational needs, this controversy would be nonjusticiable. While the complaint does not present a "political question" in the traditional sense of the term, there are no "discoverable

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[30] "It is argued that . . . in effect it [the taxation formula] amounts to an exemption from the tax of all this property within cities and districts . . .

. . .

" . . . No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds." 213 F.2d 639-40.

[31] "We are not concerned with the particular method adopted by Louisiana of allocating the tax between the State and its political subdivisions. That is a matter within the competency of the state legislature." 270 U.S. 372.

See *Columbus Southern Railway* v. *Wright*, 151 U.S. 470, 476-7 (1894).

[32] Moreover, the students are arguably complaining only about a property interest, rather than their personal liberty, so that the grievance does not fall within section 1343. With more money, plaintiffs could either attend private schools or move to a wealthy school district. See generally *Gray* v. *Morgan*, 371 F.2d 172, 174 (7th Cir. 1966). See also *Abernathy* v. *Carpenter*, 208 F.Supp. 793 (W.D.Mo. 1962), *affirmed* 373 U.S. 241 (1963).

and manageable standards'"[33] by which a court can determine when the Constitution is satisfied and when it is violated.[34]

The only possible standard is the rigid assumption that each pupil must receive the same dollar expenditures. Expenses are not, however, the exclusive yardstick of a child's educational needs. Deprived pupils need more aid than fortunate ones.[35] Moreover, a dollar spent in a small district may provide less education than one used in a large district. As stated above, costs vary substantially throughout the state. The desirability of a certain degree of local experimentation and local autonomy in education also indicates the impracticability of a single, simple formula. Effective, efficient administration necessitates decentralization so that local personnel, familiar with the immediate needs, can administer the school system. As new teaching methods are devised and as urban growth demands changed patterns of instruction, the only realistic way the state can adjust is through legislative study, discussion and continuing revision of the controlling statutes.

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[33] *Reynolds* v. *Sims*, 377 U.S. 533, 557 (1964).

[34] Illustrating the lack of standards, plaintiffs' original complaint sought to have this court "order defendants to submit . . . a plan to raise and apportion all monies . . . in such a manner that such funds available to the school districts wherein the class of plaintiffs attend school will . . . assure that plaintiff children receive the same educational opportunity as the children in any other district . . . . "

[35] Ideally, disadvantaged youth should receive more than average funds, rather than equal expenditures, so their potential can be fully developed. A rule coercing equal expenditures for all, especially if raised to a constitutional plane, would completely frustrate this ideal. See generally Kurland, *"Equal Educational Opportunity: The Limits of Constitutional Jurisprudence. Undefined,"* 35 U.Chi.L.Rev. 583, 591 (1968).

Even if there were some guidelines available to the judiciary, the courts simply cannot provide the empirical research and consultation necessary for intelligent educational planning.[36] As early as 1919 Mr. Justice Holmes explained that "the Fourteenth Amendment is not a pedagogical requirement of the impracticable." *Dominion Hotel* v. *Arizona*, 249 U.S. 265, 268 (1919).

Plaintiffs have assumed that requiring expenditures to be related to the needs of the students will result in better education for deprived students without a corresponding decrease in the quality of education now offered by the affluent districts. The more money the latter districts must supply to the former, however, the less incentive the well-to-do will have to raise their tax rates. If the quality of good public schools declines, affluent children have the option to attend private schools,[37] thus completely eliminating the need for the wealthy to raise taxes.[38]

V. Conclusion

The present Illinois scheme for financing public education reflects a rational policy consistent with the mandate of the Illinois Constitution. Unequal educational expendi-

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[36] *Compare Baker* v. *Carr*, 369 U.S. 186, 282 & 323 (1962); *Colegrove* v. *Green*, 328 U.S. 549, 556 (1946); *Coleman* v. *Miller*, 307 U.S. 433, 454-5 (1939).

[37] See *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).

[38] Furthermore, the public schools' most acute financial crisis is in the large cities. But their struggles are only symptomatic of the overall decay of many urban centers. Despite the attempts of Congress and the state legislatures, the nation still does not have the solution to this degeneration, principally because there are not enough tax dollars to meet all needs. If the legislatures cannot solve these problems surely the deep cutting edge of constitutional precepts is not the answer. *Compare Avery* v. *Midland County*, 36 L.W. 4257, 4264 (1968) (Mr. Justice Fortas' dissent).

tures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination. Moreover, the statutes which permit these unequal expenditures on a district to district basis are neither arbitrary nor unreasonable.

There is no Constitutional requirement that public school expenditures be made only on the basis of pupils' educational needs without regard to the financial strength of local school districts. Nor does the Constitution establish the rigid guideline of equal dollar expenditures for each student.

Illinois' General Assembly has already recognized the need for additional educational funds to provide all students a good education. Furthermore, the legislative School Problems Commission assures a continuing and comprehensive study of the public schools' financial problems. If other changes are needed in the present system, they should be sought in the legislature and not in the courts. Plaintiffs have stated no grounds for judicial relief, and this cause must be dismissed.

Dated this 15th day of November, 1968.

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Judge of the United States Court of Appeals for the Seventh Circuit, Designated Member of the Three-Judge District Court.

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District Judge of the United States District Court for the Northern District of Illinois, Eastern Division, Designated Member of the Three-Judge District Court.

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District Judge of the United States District Court for the Northern District of Illinois, Eastern Division, Designated Member of the Three-Judge District Court.

APPENDIX B

Article IX §12 — Illinois Constitution:

> No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, * * *

Chapter 85, Ill. Rev. Stats. (1967):

> 851. *Limitation on indebtedness of counties under 500,000 and townships, school districts or other municipal corporations under 300,000.*] § 1. Except as hereinafter provided in this Act, no county having a population of less than 500,000 and no township, school district or other municipal corporation having a population of less than 300,000 shall become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding two and one-half per centum (2½%) on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness.
>
> Any county, township, school district and municipal corporation may provide by resolution for the taking of a census of the population thereof in order to determine the number of such population for any and purposes of this Act. The courts in this State shall take judicial notice of the population of any county or township or school district or municipal corporation as the same may appear from the latest county or township or school district or municipal corporation census so taken. However, no county or township or school district or municipal corporation census shall be taken by the authority of this section, oftener than once in three years. As amended by act approved July 17, 1945. L. 1945, p. 1203.

851.2 *Indebtedness of school districts for building and working cash fund.*] § 1.2. The limitation prescribed in Section 1 of this Act shall not apply to any indebtedness of any school district for acquiring or improving a site or sites, constructing, extending, improving and equipping school buildings or establishing a working cash fund. As amended by act approved May 24, 1957. L. 1957, p. 285.

851.3 *Indebtedness of school districts for funding bonds.*] § 1.3. The limitation prescribed in section 1 of this act shall not apply to any indebtedness of any school district incurred in connection with the issuance of funding bonds. As amended by act approved Aug. 15, 1941. L. 1941, vol. 2, p. 472.

Chapter 122, Ill. Rev. Stats. (1967) (continued in a separate volume).